

GENERAL INFORMATION ABOUT FILING A BANKRUPTCY CASE

The law governing bankruptcy cases and the rights of debtors and creditors in bankruptcy cases is title 11 of the United States Code, 11 U.S.C. § 101, et seq., usually referred to as the “Bankruptcy Code.” The current law was enacted in 1978 and has been amended several times since.

Important provisions governing the jurisdiction and operation of the bankruptcy courts and the administration of a bankruptcy debtor’s property (the “bankruptcy estate”) are located in title 28 of the United States Code. (28 U.S.C. § ____.) Federal criminal laws relating to the conduct of parties and officials acting in bankruptcy cases are located in title 18, United States Code. (18 U.S.C. § ____.)

In addition, the procedural aspects of a bankruptcy case, including many important time limits, are governed by the Federal Rules of Bankruptcy Procedure (referred to as the “Bankruptcy Rules” or “Fed. R. Bankr. P.”). Most courts have local rules that must be observed by any party involved in a bankruptcy case in that court (usually referred to as “L.R. ____”).

A debtor who has decided to file a bankruptcy case needs to assemble and complete a number of forms. Most of these forms are Official Forms (from Part I of this Manual), but some may be Procedural Forms (from Part II).

The requirements for filing various forms derive from the Bankruptcy Code, primarily sections 301, 302, and 521(1) (11 U.S.C. §§ 301, 302, 521(1)), and the Bankruptcy Rules, most importantly Rules 1002, 1005, 1007, 1008, and 3002. Bankruptcy Rule 9009 mandates the use of the Official Forms and authorizes the Judicial Conference of the United States to prescribe them. Rule 9009 also authorizes the Director of the Administrative Office to issue additional (procedural) forms for use in bankruptcy cases.

Filing a bankruptcy case is a complex undertaking. Anyone contemplating such a step should consult an attorney. If the extensive documents required in a bankruptcy case are not completed properly, or if further steps in the bankruptcy process are not taken on time, a debtor can lose property or other important rights unnecessarily.

General information on chapters 7, 9, 11, 12, and 13 of the Bankruptcy Code and definitions of bankruptcy terminology are available in the form of a Public Information Series, comprised of a series of fact sheets on these topics. Anyone may obtain the Public Information Series from the Administrative Office of the United States Courts, Bankruptcy Judges Division, One Columbus Circle, N.E., Washington, D.C. 20544. The fact sheets have been combined in the publication “Bankruptcy Basics,” which is available at the federal judiciary’s Internet website, “www.uscourts.gov.”

An individual, of course, has the right to file a bankruptcy case without employing an attorney. Before doing so, the debtor should read a “self-help” book on filing bankruptcy or other reference materials, which are available in many libraries and bookstores. Many public libraries have reference sections containing copies of the Bankruptcy Code, Bankruptcy Rules, state laws, and additional books that can help explain them. A debtor should make sure to read only a CURRENT edition of the Bankruptcy Code and the Bankruptcy Rules, as both the Bankruptcy Code and the Bankruptcy Rules are amended frequently. The instructions in this Manual are necessarily brief and general. They should not be used as a substitute for reference to the applicable laws and rules but only as a supplement to them.

THE DEBTOR SHOULD READ ALL INSTRUCTIONS THOROUGHLY BEFORE BEGINNING TO FILL OUT ANY FORMS. EXTRA COPIES OF EACH FORM SHOULD BE MADE TO USE AS WORKSHEETS. A WORKSHEET SHOULD BE COMPLETED FOR EACH FORM. AFTER THE DEBTOR HAS COMPLETED AND REVIEWED EACH WORKSHEET AND IS SATISFIED THAT THE FORMS HAVE BEEN COMPLETED CORRECTLY, THE DEBTOR SHOULD TRANSFER THE INFORMATION FROM EACH WORKSHEET TO A CLEAN BLANK FORM. THE COMPLETED FORMS SHOULD BE SET ASIDE FOR SIGNING AND FILING.

The best procedure is to complete all required forms prior to filing. Bankruptcy Rule 1007 permits a debtor to file schedules and statements within 15 days after filing the petition and a list of all creditors with their addresses. This 15-day period can be extended by the court but only for cause after notice to the U.S. trustee and others specified in the Rule. A debtor should take advantage of these extensions only in an emergency.

In any voluntary case under any chapter of the Code a debtor must file the following forms:

- Official Form 1, Voluntary Petition
- Official Form 6, Schedules
- Official Form 7, Statement of Financial Affairs.

In addition, a debtor who is an individual filing a chapter 7 liquidation case and who has one or more secured consumer debts may need to file

- Official Form 8, Individual Debtor's Statement of Intention.

If an individual debtor is unable to pay the required filing fee at the time of filing the case, the debtor may need to file

- Official Form 3, Application and Order to Pay Filing Fee in Installments.

In a chapter 11 case, the debtor also must file

Official Form 4, List of Creditors Holding 20 Largest Unsecured Claims.

If a debtor under any chapter is represented by an attorney, the attorney must complete and file

Procedural Form B 203, Disclosure of Compensation of Attorney for Debtor.

If a debtor uses a bankruptcy petition preparer, the preparer should complete and file

Procedural Form B 280, Disclosure of Compensation of Bankruptcy Petition Preparer.

In addition, every court requires a mailing list for notifying creditors about the case that must be prepared according to a locally-prescribed format. In certain courts, by local rule, this list also must contain the names and addresses of specified entities, such as the district office of the Internal Revenue Service (IRS), regardless of whether the entity is a creditor in the case.

In some cases, a debtor also may need to file certain documents for which no form is nationally prescribed. For example, there is no national form for a chapter 13 plan. Some courts require a plan to be filed on a form prescribed by that court. Others will accept plans in a variety of formats. Some business supply stores stock bankruptcy filing kits, and these may include a form for a chapter 13 plan that has been developed by the forms publisher. Complex issues may arise in the crafting of a chapter 13 plan. A debtor planning to file a chapter 13 case without a lawyer should consult the standing chapter 13 trustee for the district in which the debtor intends to proceed prior to filing a case. Anyone can obtain the name, office address, and telephone number of the standing chapter 13 trustee from the bankruptcy clerk's office.

Corporations and partnerships also have additional filing requirements. A corporation is required to file a list of equity security holders. Fed. R. Bankr. P. 1007(a)(3). As there is no nationally-prescribed form, the debtor or debtor's attorney must determine from the Rules what information must be supplied and create a suitable form for filing.

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the Schedules contain a form on which individuals must report this information, no form is prescribed for a corporation or partnership. Accordingly, a corporation or partnership must devise a statement that provides the required information. In addition, many courts have local rules that state that a corporation must file a copy of the corporate resolution authorizing the filing of the bankruptcy case. There is no prescribed form for such a resolution.

THE DEBTOR SHOULD FILL IN ALL THE BLANK SPACES AND LINES ON EACH FORM. Some forms (Schedules E, F, G, and H, and the Statement of Financial Affairs) contain boxes for a debtor to use to state that the debtor has nothing to report or a question does not apply. On all other forms, a debtor should either insert "N/A" or "None" in response to any question or request for information that is not applicable or should cross out a printed statement that does not apply and initial the cross-out.

IT IS VERY IMPORTANT THAT THE DEBTOR SIGN ALL DOCUMENTS IN ALL THE REQUIRED PLACES. If a married couple files a joint case, both spouses must sign in all required places. If the debtor is represented by an attorney, the attorney must sign most documents. See Fed. R. Bankr. P. 9011. Any bankruptcy petition preparer also must sign in the spaces provided.

The Bankruptcy Code also authorizes a creditor or group of creditors to file an involuntary case against a debtor. 11 U.S.C. § 303. As the requirements for such a filing are complex and the penalties for improper filing harsh, anyone contemplating such action should consult an experienced attorney.